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2 UNITED STATES  
3 ENVIRONMENTAL PROTECTION AGENCY  
4 REGION IX

5 In the Matter of: )

6 Lompoc Plating Site )  
1335 Purisima Road )  
Lompoc, California )

7 Mr. Gerald Niesen )  
8 Mr. Fred Freedly )  
Respondents )

Order No. 90-09

9 Proceeding under Section 106 of the )  
10 Comprehensive Environmental Response, )  
11 Compensation and Liability Act of 1980, )  
as amended by the Superfund Amendments )  
12 and Reauthorization Act of 1986, )  
(42 U.S.C. §9606) )

13 I. JURISDICTION

14 This Order is issued to Mr. Gerald Niesen and Mr. Fred  
15 Freedly (Respondents) pursuant to the Comprehensive Environmental  
16 Response, Compensation and Liability Act of 1980, as amended  
17 (CERCLA), 42 U.S.C. §9601 et seq., by authority delegated to the  
18 Administrator of the United States Environmental Protection  
19 Agency (EPA), and redelegated to the EPA Regions.

20 The Director of the Hazardous Waste Management Division, EPA  
21 Region 9, has determined that there may be an imminent and sub-  
22 stantial endangerment to the public health, welfare or the en-  
23 vironment because of the release and threatened release of haz-  
24 ardous substances from the Lompoc Plating Site in Lompoc,  
25 California.

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2 II. FINDINGS OF FACT

3 A. BACKGROUND

4 1) The site is located at 1335 Purisima Road in Lompoc,  
5 Santa Barbara County, California, and consists of ap-  
6 proximately 4 acres, in a rural residential area.

7 2) Mr. Gerald Niesen is the current owner of the site.

8 3) Mr. Fred Freedly is the owner of the hazardous materials  
9 that are stored on the property. According to Santa Barbara  
10 County Health Department (SBCHD) records, the hazardous  
11 materials were primarily plating wastes that were received  
12 by Mr. Freedly from a now-defunct plating operation.

13 4) On March 16, 1990, the DEA and Santa Barbara County  
14 Sheriff's office raided a drug lab on the property. During  
15 the raid, the plating chemicals were discovered, and the  
16 SBCHD called to take care of the problem.

17 5) SBCHD issued a Notice of Violation (NOV) to both of the  
18 Respondents ordering them to clean up the materials by March  
19 26, 1990.

20 6) The NOV was not complied with, and EPA responded on  
21 March 30, 1990, to stabilize and categorize the wastes at  
22 the request of the SBCHD.

23 B. ENDANGERMENT

24 1) During EPA's March 30 response, on-site hazardous  
25 categorization results indicated that many drums of liquids  
26 with a pH of less than 2.0 and greater than 12.5 were  
27 present on the site.

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2 2) Approximately 175 drums and 10-15 vats were located on  
3 the site. Several of the drums were overpacked, but some  
4 remain in threatening condition.

5 3) The vats all contained acidic liquids and were open to  
6 the environment. These are a potential contact and airborne  
7 threat to residents on the site.

8 4) Laboratory analysis of two of the drums indicated the  
9 presence of cyanides in significant quantities. Some of  
10 these drums are in close proximity to some of the acidic  
11 drums. If these two liquids should come in contact with  
12 each other a very toxic gas would be formed. This gas could  
13 spread out and come in contact with neighboring residents  
14 and cause health problems, which could include death for  
15 acute exposures.

### 16 III. CONCLUSIONS OF LAW

17 A. Respondents are "persons" as defined in Section 101(21) of  
18 CERCLA, 42 U.S.C. §9601(21).

19 B. The site located at 1335 Purisima Road, Lompoc, California,  
20 is a facility as defined in Section 101(9) of CERCLA, 42  
21 U.S.C. §9601(9).

22 C. Substances with a pH of less than 2 or greater than 12.5, and  
23 cyanides are "hazardous substances" as defined in Section  
24 101(14) of CERCLA, 42 U.S.C. §9601(14).

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2 D. The presence of hazardous substances on the site and the  
3 potential for those substances to spill or leak constitutes a  
4 "release" or "threat of release" of hazardous substances into  
5 the environment as defined in Section 101(22) of CERCLA, 42  
6 U.S.C. §9601(22).

7 E. Respondents are "responsible parties" as defined in Section  
8 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).

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#### IV. DETERMINATIONS

10 Based on the Findings of Fact and Conclusions of Law, the  
11 Director, Hazardous Waste Management Division, EPA Region IX, is  
12 making the following Determinations:

13 A. The release and threatened release of hazardous substances  
14 and pollutants or contaminants from the site may present an  
15 imminent and substantial endangerment to the public health  
16 or welfare or the environment.

17 B. In order to prevent or mitigate immediate and significant  
18 risk of harm to human health or the environment, it is  
19 necessary that actions be taken immediately to contain and  
20 prevent the release or potential release of hazardous sub-  
21 stances, pollutants or contaminants from the site.

22 C. The removal measures required by this Order are consistent  
23 with the National Contingency Plan (NCP), 40 Code of Federal  
24 Regulations (CFR), Part 300.

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2 V. WORK TO BE PERFORMED

3 Based upon the Findings of Fact, Conclusions of Law, and  
4 Determinations, EPA hereby orders the Respondents to implement  
5 the following measures under the direction of EPA's On-Scene  
6 Coordinator (OSC):

- 7 A. Immediately upon receipt of this Order, establish site  
8 security for the site. This shall include 24-hour security  
9 with authority for site access and to keep people away from  
10 all the hazardous materials, until the hazardous materials  
11 are removed from the site.
- 12 B. Within 24 hours of receipt of this Order, submit to EPA a  
13 plan for stabilization of the site until final removal of  
14 the hazardous materials can occur. This may include either  
15 removal of the hazardous materials to a permitted  
16 storage facility, or continuous 24-hour security until dis-  
17 posal can be arranged.
- 18 C. Within 14 calendar days of receipt of this Order, submit a  
19 work plan to EPA for approval which includes:  
20 1) soil sampling plans;  
21 2) plans for the treatment, recycling or disposal of the  
22 drums, tanks, and any other contaminated materials or soils;  
23 and,  
24 3) dates for the accomplishment of all tasks.
- 25 D. All work under the work plan shall be completed within 120  
26 days from receipt of this Order.

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- 2 E. Respondents shall assure that their contractor shall main-  
3 tain currently effective insurance policies as identified to  
4 the EPA OSC, or their equivalent, throughout the duration of  
5 the performance of any response actions performed pursuant  
6 to this Order.
- 7 F. Respondents shall not commence any work under this Order  
8 prior to written approval of the work plan by the EPA OSC.  
9 All work plans shall be in accordance with appropriate EPA  
10 guidances, including, but not limited to, the NCP (40 CFR  
11 300), OSHA, and those directed for use by the OSC.
- 12 G. All work plans shall include Health and Safety Plans that  
13 are consistent with EPA Guidance, OSHA 29 CFR §1910, and all  
14 comparable state and local laws. All such Health and Safety  
15 Plans are to be followed by all personnel at all times.
- 16 H. All sampling and analysis shall be consistent with the  
17 "Removal Program Quality Assurance/Quality Control Interim  
18 Guidance: Sampling, QA/QC Plan, and Data Validation" EPA  
19 OSWER Directive 9360.4-01, dated February 2, 1989.
- 20 I. If EPA determines that any work plan or any work is not  
21 adequate to address site conditions, EPA shall state so in  
22 writing to the Respondents. EPA shall at that time direct  
23 the Respondents to either perform the work adequately, or  
24 resubmit work plans which incorporate EPA comments within a  
25 time designated by EPA. If subsequent work or work plans  
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2 are not to EPA's satisfaction, EPA will reserve its right to  
3 take over the response actions and recover costs under §107  
4 of CERCLA (42 U.S.C. §9607).

5 The OSC will determine the sufficiency of all response ac-  
6 tions and will determine when the response action has been  
7 completed. Upon completion, Respondents shall submit a  
8 report to EPA detailing all activities performed pursuant to  
9 this Order.

10 VI. COMPLIANCE WITH OTHER LAWS

11 Respondents shall comply with all Federal, state and local  
12 laws and regulations in carrying out the terms of this Order.  
13 All hazardous substances removed from the facility must be  
14 handled in accordance with the Resource Conservation and Recovery  
15 Act of 1976, 42 U.S.C. §6921, et seq., the regulations promul-  
16 gated under that Act, and Section 121(d)(3) of CERCLA, 42 U.S.C.  
17 §9621(d)(3).

18 VII. ON-SCENE COORDINATOR

19 EPA has appointed an On-Scene Coordinator (OSC) for the site  
20 who has the authority vested in the OSC by 40 CFR Part 300, et  
21 seq. The OSC for the site for the purposes of this Order is:

22 Kelly S. McCarty, H-8-3  
23 US EPA, Region IX  
24 1235 Mission Street  
25 San Francisco, California 94102  
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2 VIII. SUBMITTALS

3 All submittals and notifications to EPA required by this Or-  
4 der or any approved proposal under this Order shall be made to:

5 Jerry Clifford  
6 Assistant Director, Hazardous Waste Management Division  
7 US EPA, Region IX  
8 1235 Mission Street  
9 San Francisco, California 94102

10 Copies of all submittals and notifications shall also be  
11 sent to the OSC at the above address.

12 All approvals and decisions of EPA made regarding the sub-  
13 mittals and modifications shall be communicated to Respondents by  
14 the Assistant Director, Hazardous Waste Management Division, or  
15 his designee. No informal advice, guidance, suggestions, or com-  
16 ments by EPA regarding reports, plans, specifications, schedules,  
17 or any other matter will relieve Respondents of their obligation  
18 to obtain formal approvals as required by this Order.

19 IX. ACCESS

20 Respondents shall be responsible for all access agreements  
21 necessary to perform the work. Access shall be for any time  
22 during site characterization, necessary removal actions and any  
23 subsequent monitoring. Access shall be for Respondents, Respon-  
24 dents' contractors, EPA, state and county representatives, and  
25 any other person or agency that the EPA determines should have  
26 access. If Respondents are unable to obtain access, despite  
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2 certifiable efforts, Respondents shall notify EPA within ten days  
3 of receipt of this Order. Nothing in this Order limits any ac-  
4 cess rights that EPA or other agencies may have pursuant to the  
5 law.

6 X. ENDANGERMENT DURING IMPLEMENTATION

7 The EPA OSC may determine that acts or circumstances  
8 (whether related or unrelated to this Order) may endanger human  
9 health, welfare or the environment and may order the Respondents  
10 to stop further implementation of this Order until the endanger-  
11 ment is abated.

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13 XI. GOVERNMENT NOT LIABLE

14 The United States Government, the State of California, Santa  
15 Barbara County, and employees, agents and other representatives  
16 of each governmental entity shall not be liable for any injuries  
17 or damages to persons or property resulting from the acts or  
18 omissions of Respondents, their employees or other representa-  
19 tives caused by carrying out this Order. For the purposes of  
20 this Order, the United States Government, the State of Califor-  
21 nia, and Santa Barbara County are not, nor is any single  
22 governmental entity, a party to any contract with the Respon-  
23 dents.

24 XII. NONCOMPLIANCE

25 A. A willful violation or failure or refusal to comply with  
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1       this Order may subject Respondents to a civil penalty of up  
2       to \$25,000 per day in which the violation occurs or failure  
3       to comply continues, pursuant to the provisions of Section  
4       106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Failure to  
5       comply with this Order without sufficient cause may also  
6       subject the Respondents to punitive damages of up to three  
7       times the total costs incurred by the United States for site  
8       response pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C.  
9       §9607(c)(3).

10    B.   EPA may take over the response action at any time if EPA  
11       determines that Respondents are not taking appropriate ac-  
12       tion. EPA may order additional actions it deems necessary  
13       to protect public health, welfare or the environment.

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2 XIII. OPPORTUNITY TO CONFER

3 Respondents may request a conference with the Assistant  
4 Director, Hazardous Waste Management Division, EPA Region IX, or  
5 his designee to discuss the provisions of this Order. At any  
6 conference held pursuant to Respondents' request, Respondents may  
7 appear in person or by counsel or other representatives for the  
8 purpose of presenting any objections, defenses or contentions  
9 which Respondents may have regarding this Order. If Respondents  
10 desire such a conference, Respondents must make a request orally  
11 within 24 hours of receipt of this Order, and confirm the request  
12 in writing immediately. A conference does not alter the effective  
13 date of the Order.

14 XIV. PARTIES BOUND

15 This Order shall apply to and is binding upon the Respondents,  
16 their officers, directors, agents, employees, contractors,  
17 successors, and assigns.

18 XVI. NOTICE OF INTENT TO COMPLY

19 Within 24 hours of receipt of this Order, Respondents shall  
20 orally inform EPA of their intent to comply with the terms of  
21 this Order. The oral notice shall be confirmed within two days  
22 of the oral notice by written notice. Failure to notify EPA in a  
23 timely manner of the Respondents' intent to fully comply will be  
24 construed by EPA as a refusal to comply.  
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4 XVIII. EFFECTIVE DATE

5 Notwithstanding any conferences requested pursuant to the  
6 provisions of this Order, this Order is effective upon receipt by  
7 the Respondents.

8 IT IS SO ORDERED on this 13<sup>th</sup> day of April, 1990.  
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10 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

11 by:

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13 Jeff Zelikson  
14 Director, Hazardous Waste Management Division  
US EPA, Region IX

15 CONTACTS:

16 Kelly McCarty, OSC, H-8-3  
17 US EPA, Region IX  
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18 San Francisco, CA 94102  
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